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YOUR VOICE AGAINST DESIGN THEFT

'Bud' by Innermost



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Dear ACID members,

LETTER TO YOUR MPS



Thank you so much to all members who took the trouble to write to your MPs raising your concerns about the potential loss of unregistered EU design protection, deal or no deal. Many of you said that any erosion of protection could devastate your businesses because you will not be able to block copies of your designs being made and sold across the EU. Why? Because like many UK designers, you mainly rely on automatic UK and EU unregistered rights and you will not be protected. Currently you are protected.

In these letters you each described how many people depend on you for job security and that there cannot be any erosion of your IP protection. This would impact on the continuing success of your company to achieve growth. In these horrible, uncertain times this is paramount.

Without exception each of your MPs wrote to the Secretary of State and, in fairness The Minister, The Rt Hon Chris Skidmore, MP., wrote back to your MP for which we are grateful. We welcome the Minister's focus on intellectual property but would make comments on his letters to MPs.

The Minister says, "The Government understands how vital an effective intellectual property system is for creative businesses. The UK has one of the best intellectual property regimes in the world and we must continue to work to ensure that it serves rights holders and users as effectively as possible".

The Minister's comments on our IP system and its effectiveness as a world leader are spot on and all credit to Tim Moss, CBE, and his team at the IPO. However, what he and they seem to fail to understand is that whilst we have a world class system, access to justice and the legal system is the luxury of the few. Why? Because most UK designers are micro and SME and cannot afford the time and cost to take legal action. It is all very well having one of the best systems in the world but if the design sector is continually frustrated at the increase in copycats and inability to see redress through a legal system which is affordable, something needs to happen to change this dynamic.

I have written to the Minister to raise this point, asking for his comments and suggesting some solutions. (Please IPO don't draft the same reply!) One, could be a low cost national UK IP insurance scheme with more access to compulsory mediation, maybe using the ACID system "Mediate to Resolve" where there are no lawyers. Introducing criminal provisions for intentional unregistered design rights infringement as a real deterrent is also high on my list together with exemplary damages that hurt. Developing the work of the Industry Strategy roundtables to hold online platforms to account for IP infringement is also a sound focus. **Do you have further suggestions?**

The Minister also said, "We are aware that there are questions over first disclosure of designs and providing clarity for UK businesses continues to be our aim as we move forwards towards negotiations on the UK's future relationship with the EU. It may be beneficial if designers seek independent legal advice from a registered IP attorney on this particular issue"

I am afraid this is not good enough Minister. It may be low down on the hierarchy of priorities for Government now, but the UK design sector is still growing and contributes a massive £85.2 billion to the UK's GVA. The Government has given guidance on many other aspects of IP but has failed to address this possible erosion for the majority of the UK's designers. I have urged him, on behalf of our members and the broader design community, to give immediate



legal clarity on the position of UK designers publishing their designs simultaneously in the UK and EU, so that they do not run the risk of copyists from EU states copying their designs with no protection. The UK's designers deserve better than this.

THE FURNITURE MAKERS COMPANY



"To make, inspire and support!"

On a lighter note, on May 14th I will be honoured to be installed at St Mary le Bow church, London as the Master of the Worshipful Company of Furniture Makers which is the City of London Livery and Charity for the furniture and furnishings industry. They exist to support - "we're here to help when times get tough" with a focus on educating, for the future of the industry and driving forward excellence and high standards.

Our ACID member furniture and furnishings design community are our largest sector within our own membership and, over the past decade, as well as supporting the broader objectives within the Livery, I've been able to raise IP education and awareness and the importance of brand protection. Many ACID members have also been recognised for excellence through the prestigious Design Guild Mark, chaired by ACID member Rodney McMahon of Morgan Contract Furniture. This is one of several awards which anyone can enter and which you may like to consider? Design Guild Mark, Bespoke Guild Mark, Export, Sustainability and Manufacturing. www.furnituremakers.com

My focus will be on welfare. Raising awareness through a campaign called "One Step at a Time!" None of us know when life is going to throw us a curveball. Who knows when fate will place us in need of support? The hand of friendship and kindness should never be underestimated, and we want the industry to know that they have a friend in the Furniture Makers for one off grants and

to any one of the 327,000 who work within this amazing sector. Equally, we are going to kick start an additional means of raising funds through supporters and, at £2 a month, it is affordable by all. You never know when you may need some help!

AND FINALLY!

In May 2020 I will be standing down as CEO of ACID but remaining as Chairman, so the search is on for a new CEO. Are you equally passionate about design, innovation and campaigning for design law reform? Do you have the vision and energy to take ACID into the next chapter? Do you have an overall awareness and interest in intellectual property? Then please get in touch, the search is on!

Campaigning & IP Design Law Update



R to L: Eddy Leviten DG of the Alliance for IP, Bill Bush, Chairman of the Alliance and Executive Director of the Premier League, Dids Macdonald, OBE and Andrew Bowie, MP for W Aberdeenshire & Kincardine and PPM to the Prime Minister

UNREGISTERED COMMUNITY DESIGN RIGHT - BREXIT

We explained to MP Andrew Bowie (and PPM to the PM) that the level of protection afforded to designers by the EU's unregistered Community design (UCD) right is significantly higher than that of the UK equivalent. However, the design sector will still be gravely at risk without reciprocal protection (that is, from the EU27 countries). Post-Brexit, for designs first disclosed in the UK, while they may well be sufficiently protected here, they will incur no UCD

protection in the EU if first publication of that design occurs in the UK, because the UK will no longer be a member of the EU. It is an absolute requirement of the EU protection for first publication to take place in an EU member state. See ACID Chief Counsel's opinion piece on the subject on P5.

We explained to Andrew Bowie that despite repeated requests to senior officials at the IPO, designers have been told to take legal advice on this matter. ACID requests urgent guidance and leadership from Government on this crucial issue. We were

able to supply strong and compelling ACID evidence to the IPO to demonstrate the need for the Supplementary Unregistered Design Right in the UK and it is a welcome step in the right direction that they acted upon this. But it is not enough to protect UK designers, deal or no deal, when we leave the EU.

ONLINE INFRINGEMENT

Whether infringement is occurring in online marketplaces, on social media or through digital advertising, the general theme running through the case studies we receive is of a frustrating, time consuming and therefore expensive process to effect take down. In most cases, redress is complicated, through often impenetrable processes which make it difficult to access without employing expensive brand protection professionals. Most of ACID members are micro and SME and so this is cost prohibitive.

From the responses we received many cite this as the single biggest challenge, with no evidence that this online infringement is decreasing. One company has decided to close because the challenges are too great another has suffered serious job losses

(within a small organisation) and another has also suffered job losses but keeps going. If this trend continues it has significant consequences. Having worked positively with Amazon and Alibaba over the past few months, there would appear to be a general willingness to work with stakeholders, but whether this is translated through to grass roots' tackling of the problem is debateable. On a positive note, talks are progressing with Amazon on accepting unregistered design rights if they are secured on the ACID IP Databank.

RECOMMENDATIONS:

Removals – there is little evidence of instant removals and often, it is only by intervention by ACID, through contacts with staff in senior management positions that there has been effective intervention. Even when there is evidence of consistent communication of infringement, many just pop up in different places and often they fail to be removed, even with evidence of IP rights' ownership. What would help would be a single point of contact for UK removals across all online platforms.

Unique Identification

Numbers – issuing these would ensure that products taken down are not re-listed. This would give confidence to those who manage to secure effective removals that they are working together with online marketplaces rather than having to battle with them to seek redress.

Unique identification

Numbers for all correspondence – there is no evidence that this is happening

Consistency – Before any real progress is made with online marketplace infringement, more constructive conversations need to occur to establish common ground for an approach to redress which is supported by a much simpler system. Now is a good climate for this to be suggested given the global focus on compliance and better governance which is long overdue. In the ACID case studies, there is no evidence of consistent approaches to online infringement by any marketplaces

Communicated Policies

– from online marketplaces giving rights' holders confidence that, for example, repeat infringers are not allowed back and how this is managed.

Training – Whilst the Amazon Brand Registry is a good start, there is a need for a consistent approach to training sessions for rights' holders through external webinars or directly from the marketplaces themselves. A simple walk through the process would work with online help available at each stumbling block with simple explanations. Most processes are clunky and over-complicated and, because of the time constraints of small businesses it becomes increasingly frustrating and impossible to deal with this issue.

Acceptance of unregistered trade marks and unregistered designs

as evidence – unless online platforms accept evidence of these, this precludes the majority of micro and SMEs from ensuring effective take down. If evidence of copyright is accepted why is there a barrier to unregistered rights?

This forms the basis of ongoing conversations to make this happen.

Read ACID member Duncan McClay's article on page 14 where he talks about ThisisNessie and their IP infringement nightmare, one of thousands suffering online IP infringement.

ARTISTS RESALE RIGHTS

ACID supports the Alliance for IP and DACS (Design and Artists Copyright Society) position on Artist's Resale Rights (ARR). Artist's Resale Right (ARR) is a legal principle that provides artists and their estates with a modest royalty from the resale of their works through galleries and auction houses. In the same way that musicians continue to generate revenue from a song or album, years after its release, ARR deploys this principle for visual artists and gives them an ongoing stake in their work. ARR is a crucial right for artists, which helps our creative economy and cultural soft power. It must be safeguarded in uncertain times. ACID agrees with DACS that the business side of being an artist is incredibly important and cannot be under-estimated. All artists should be aware of ARR. ACID supports DACS in keeping this high on radar in any FTA negotiations.

THE LEAST BAD OPTION**THE FINAL WORD FROM NICK KOUNOUPIS****Brexit and Unregistered Design Protection in the EU**

At the time of writing chaos prevails. No one can remain comfortable with the uncertainty and concern that the current paralysis in Parliament over Brexit is creating. This concern is especially so for those designers looking to protect their designs in the EU post Brexit.

One option is of course a negotiated deal to leave. This will provide an opportunity for the UK to agree with the EU the basis on which designs will be protected in the EU in the future. However, whether Theresa May's deal (which at the time of writing has failed to be approved three times) represents a satisfactory outcome is a moot point. As the former Greek Minister of Finance recently said on Question Time "it's the type of agreement that a country which loses a war is forced to sign." At the other end of the spectrum is leaving with a no deal Brexit, which might actually be an even worse option for designers.

This is because of the fundamental disparity between the nature of protection for designs afforded by the UK on one hand and the EU on the other. EU design laws protect the individual character of a design by reference to (amongst other factors) the shape, colour, texture, lines, contours and materials of a design. This scope of protection provides a wide freedom for designers to stamp their own identity on a design and to provide its requisite individual character. UK unregistered design laws however only protect the shape and functionality of a three-dimensional design thus limiting the freedom of a designer.

The UK Government has passed laws to ensure that in the event of a No Deal Brexit the EU design laws will be retained in the UK in the form of yet another species of Unregistered Design Right to be called the Supplementary Unregistered Design Right (hope you are still with me)! That's the good news. The bad news however is that this protection only applies in the UK. To retain the same protection within the EU a design will need to first have been marketed in the EU otherwise the EU laws which would otherwise provide that protection cannot apply.

ACID has persistently pointed out this anomaly to Government both in writing and in person. Sadly, the response has been to suggest that designers seek their own independent legal advice. So, if the Government cannot or will not provide some guidance on this issue it seems that a negotiated agreement which protects the rights of designers within the EU for a transitional period and which will then give a basis for future discussions is the best that designers can hope for in the event that Brexit happens.



Guest Editor

Eddy Leviten,

Director General, Alliance for Intellectual Property

DESIGNING OUT IP INFRINGEMENTS



It's a pleasure to be back as Guest Editor for the ACID Newsletter once again. A lot has happened politically since December 2016 (and by the time this is printed who knows what will have occurred) but the work of the Alliance has continued unabated, working with members, including ACID, to promote better legislation, improved enforcement and more education for creators and businesses.

In January 2018 we launched our Trading Places report, putting us at the heart of discussions and policy about the UK's future trading relationships and the Alliance meets regularly with officials from the Department for International Trade, as well as promoting the issues raised to Ministers and MPs as part of our regular political engagement programme.

We are also representing all members in a series of roundtable meetings, chaired by Government, between rights holders and major online marketplaces (Alibaba, Amazon, eBay and Facebook) to develop best practice in enforcement of IP and better partnership working to improve processes. The group has been meeting since June 2018 and the next step is to agree a memorandum of understanding, along with the bilateral discussions between

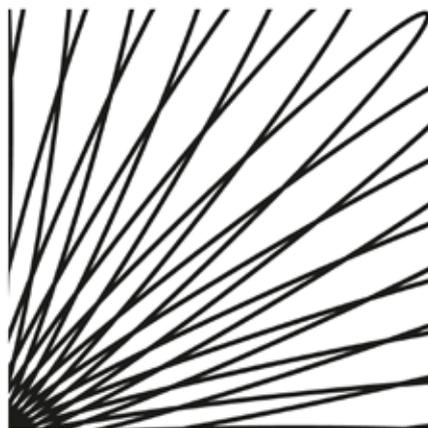
some rights holder groups and individual marketplaces which are proving to be helpful in raising specific sectoral issues, including those of designers.

Whilst we have had some productive discussions on protecting trade marks online, design rights are harder to enforce, as marketplaces are often not as well organised to detect and enforce against design infringements. As part of the ongoing process we would encourage designers to gather evidence of problems they encounter. We will work with ACID to see what could be implemented and seek to introduce those ideas into the roundtable discussions.

Along with partners, including the Creative Industries Federation, we are helping creators to realise the value of their IP and to assist in protecting their innovation both online and offline through a series of workshops.

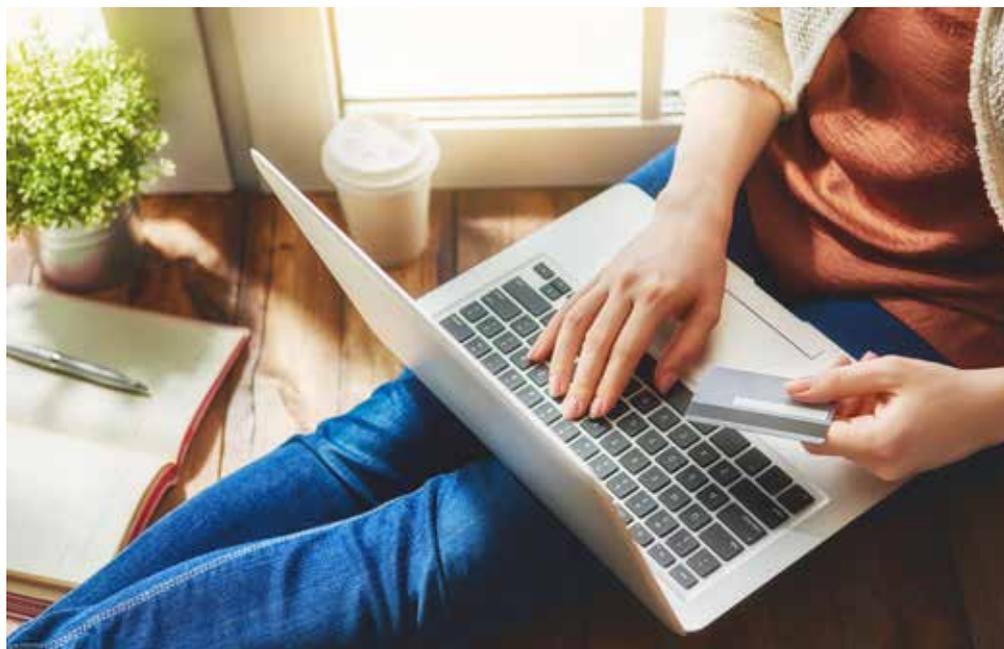
The Alliance continues to support such activity and play a central role on behalf of its members to ensure that the full range of IP creators are represented. Alongside ACID we also call for better protection for unregistered design rights, recognition of the value of the design sector in the UK and in exports and improved enforcement against counterfeiters. Our (your!) collective voice is crucial in ensuring that we maintain the UK's leading place in creativity and innovation.

www.allianceforip.co.uk



ALLIANCE

FOR INTELLECTUAL PROPERTY



Baa Stool secures copycat settlement against Swedish Wooden Horse

When Anti Copying in Design (ACID) members Baa Stool Ltd recently discovered their intellectual property had been infringed they took immediate action and instructed ACID legal affiliates McDaniel & Co to write a letter before action setting out their claim.

Shortly afterwards, Baa Stool received a signed undertaking from the infringing company who have undertaken not to make, import, sell or offer for sale the infringing article. This outcome has been reached without the need for a hearing or long drawn out and time-consuming legal correspondence.

Kelly Hudson, a Director of McDaniel & Co., acting for Baa Stool said, “Knowing the sector and from a perspective of many years dealing with design-led IP infringement, it was clear that this was an infringement and, armed with all the facts and evidence, I created an effective letter before action which resulted in an early settlement for Baa Stool. Job done!”

Baa Stool owner Michelle Bartleet-Greavey said, “Discovering a copied design can not only be deeply upsetting but can have such a negative financial impact on a company like ours. I pursued this not only to get a result but to demonstrate that our

message is crystal clear, do not copy us because we will take the necessary legal action to defend our IP rights.”

ACID Comment, “Acting promptly and obtaining the correct legal advice can be crucial to turning the situation around and getting a positive result. Publishing a successful settlement actively promotes a company’s proactive IP strategy.”

Baa Stool, a company known for creating stylish and quirky sheepskin upholstered stools and accessories, have successfully enforced their intellectual property rights against copy-cat infringers.

Baa Stool is a small independent UK company that has been trading since 2013. They pride themselves on their use of real British sheepskin applied to contemporary furniture. Since commencing, Baa Stool has grown from strength to strength so much so that they have been featured on national platforms such as Ideal Home, Sunday Times, Period Living and ITV’s Dancing on Ice. Baa Stool’s positive and highly successful past few years trading coupled alongside the abovementioned exposure has inevitably attracted copyists.

www.baastool.co.uk

www.mcdanielslaw.com



ACID MEMBER LYDIA MEIYING TAKES ON FRENCH CONNECTION IN IP DISPUTE

Designer Lydia Meiying has settled an IP dispute with French Connection's brand Great Plains, the terms of which were included in a Confidential Settlement Agreement.

Great Plains had marketed a tunic it called "Oh Deer Tunic Shirt". The design on the tunic was a reproduction of Lydia Meiying's successful Deer design which she originated in April 2007 and which has been sold successfully on notepads, giftware and as mini prints since then.

Anti Copying in Design (ACID) member Lydia Meiying is a freelance pattern designer and illustrator based in Manchester. She creates her own designs which are sold as stationery and small accessories for the home.

When she discovered the Great Plains' product, Lydia Meiying said "I was extremely upset that my successful design appeared to have been copied exactly by Great Plains. French Connection is a very substantial business and I was disappointed that its brand had plagiarised my design. I instructed Tony Catterall of ACID Legal Affiliate Taylors Solicitors with a view to obtaining undertakings and a financial settlement from Great Plains. I am pleased to say that Tony resolved the matter to my complete satisfaction within six weeks".

Senior Partner of Taylors, Tony Catterall said, after negotiating the confidential settlement, "I am pleased that we were able to conclude this matter on Lydia's behalf so quickly and on mutually agreed terms. One of the major issues for self-employed designers is the fear of plagiarism by large companies with deep pockets. This outcome for Lydia shows that designers need not be afraid of taking on the "big boys" when necessary".

ACID Comment, "It is standard practice for large retail brands to insist that the settlement terms remain confidential under an agreement. After all, they do not want to be seen as alleged copyists and bad guys because this has a detrimental effect on brand credentials. Despite, presumably not admitting liability, they settled, and it demonstrates how micro brands can take on brand Titans and get positive results. Speed and



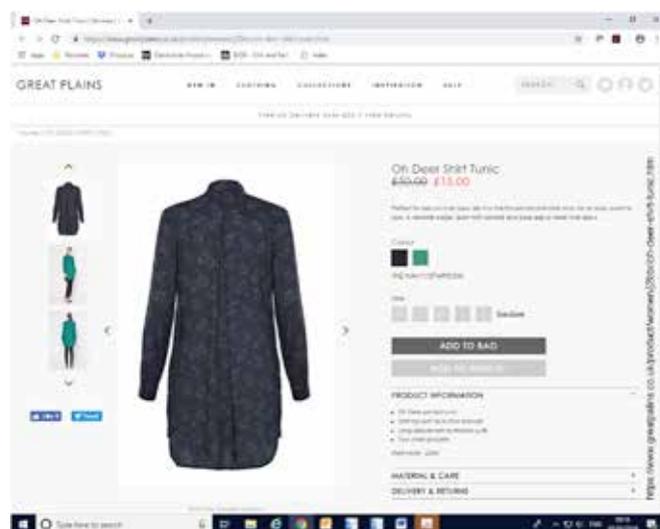
experience are of the essence in these IP disputes and the team at Taylor's acted decisively".

www.lydiameiying.com

www.Taylors.co.uk



Lydia Meiying Woodland Design



Taking Legal Action is Rarely About Going All The Way to Court!

It's more about sending a warning shot to anyone you think has copied your designs. So, let's examine why a strongly worded Letter Before Action (LBA), sometimes called a Cease & Desist, can achieve positive results, quickly and cost effectively and how you can publicise a settlement.

Here are ACID's top ten tips and guidelines!

1. NEVER SUE ON PRINCIPLE, HOWEVER MUCH IT HURTS!

Unless you can demonstrate a quantifiable loss, what's the point? Save taking action for something that really matters and is affecting your bottom line. It really needs to be a commercial decision.

2. IF YOU DECIDE TO TAKE LEGAL ACTION

Think carefully about your choice of solicitor, don't forget, if you select one of our ACID Legal Affiliates you can access initial free advice, which is usually enough to confirm whether you have a good legal case which is worth pursuing. It is also an advantage if you consult a solicitor with experience in your sector because they will

understand quickly what you are trying to achieve. Before speaking to a solicitor, make sure you have the following:

- **Archived drawings and documents to prove your design history**

- **If possible, buy an example (with a receipt) of the article you claim is a copy of your design**

- **Any reference to designs you have lodged on the ACID IP Databank**

3. WHAT DOES A LETTER BEFORE ACTION (LBA) MEAN?

Quite simply it is a solicitor's letter communicating a copying complaint to the person/company you believe has copied your products/designs. The purpose is to set out your claim to IP ownership clearly and to warn them of possible action (action means taking them to Court!). The most important aspect is to include all the relevant IP ownership information which prevents unnecessary and sometimes expensive legal "ping pong". The LBA will normally give a time limit for a reply and will reflect established facts about the complaint to

achieve, hopefully, an early settlement. Often designers cannot understand why this initial letter can appear so expensive but for a lawyer to ascertain all the facts and gather the right evidence it takes time - and costs money. So, to help maximise efficiency and minimise costs, always have all your signed and dated evidence immediately available.

Always ask:

- The cost of the LBA

- If further letters are required, establish the ongoing hourly rate. This will not necessarily reflect the effectiveness of a solicitor – experience and a proven track record count for everything. You get what you

pay for! A speedy settlement involving, say, 4 hours work at £200 per hour is more cost effective than 8 hours at £175.00 per hour.

- Don't forget a benefit of membership is discounted legal fees

4. WHY CAN AN LBA SOMETIMES SEEM SO EXPENSIVE?

IP lawyers may be more expensive than general solicitors. This is because they specialise and have experience in the complex subject of IP law. A key benefit of instructing an IP lawyer is the opposing lawyers will, most likely, recognise the experience and proven track record of



an IP expert acting on your behalf especially if they say they are an ACID Legal Affiliate. If you are going to take action – you need to make sure you have the best advice.

- An effective LBA will take time to prepare – it is not just an ordinary letter written on solicitor headed paper. It encompasses every possible aspect to achieve your objectives in taking action against copyists.

- An IP lawyer will need to be satisfied, beyond ANY doubt that you own your rights, just as you would when buying a house – think about what it costs to establish title when you are buying a property! You are relying on your solicitor's experience to spot all the potential pitfalls to act in your best interests - they are relying on being provided with all the ammunition possible to fight for your rights.

5. HOW CAN I MINIMISE THE COSTS?

- Keep accurate records - Sign, date and keep all design drawings, including any initial sketches – immediate access to this information will save costly legal time in establishing an audit trail of your design ownership. Send them to the ACID IP Databank which provides a unique tamper proof numbered certificate of lodgement.



- Ensure that you have independent evidence of the date of creation of all your designs.

- Ensure you have a complete set of legal documents including contracts of employment with the designers you employ, written agreements with freelance designers, suppliers, manufacturers and customers confirming that you own all the rights in your designs.

6. WHY IS AN LBA NECESSARY?

An LBA containing all the relevant facts and information gives the recipient the opportunity to respond positively before proceedings are issued. Issuing proceedings can be a very expensive process for both parties if they proceed. The Court Rules also require an LBA to be sent before any proceedings are commenced, except in very urgent cases.

7. HOW EFFECTIVE IS AN LBA?

- Look at the BaaStool case study on page 8 and see for yourself! ACID's experience, as a result of sending a powerful LBA, often results in a speedy, cost effective settlement with many (if not all) objectives being met.

- Before taking action, you should also consider the



legal purchasing power of the opponent – there can be difficulties when two parties with unequal market power and resources resort to Court action.

8. HOW TO AVOID MAKING A GROUNDLESS THREAT?

There is a provision under UK design law, which basically says that if you accuse someone of infringing your design and it turns out they haven't – they can then sue you! Try and always seek professional advice on the merits of your case – don't be an armchair lawyer – it could be more expensive than you think.

9. IF YOU TAKE ACTION AGAINST A COPYIST – IDENTIFY WHAT YOU WANT TO ACHIEVE

Consider the following:

- An undertaking that further alleged copy products will not be sold
- Damages to reflect quantifiable loss, if any can be identified
- An admission of liability and your costs paid

Always ask your lawyer what he/she considers reasonable, bearing in mind the facts and ask them on what they base their advice.

10. ONCE YOU HAVE ACHIEVED A SUCCESSFUL SETTLEMENT, NAME & SHAME!

ACID has an effective naming and shaming policy and publicises all successful settlements by its Legal Affiliates on behalf of members. This sends a clear message out to the industry about those companies who do not respect design originators. It also sends a clear anti copying message to bolster your proactive IP strategy. It also supports a strong message about the ACID brand of deterrence which should be used shamelessly. If you don't want to be copied then say so and there is no better way than using the logo with an IP statement on your website, packaging and marketing material.

“If you don't want to be copied say so!”

Copycat Culture

Dealing with companies who copy us

Dan Black Co-Founder and Lead Designer at Black & Blum talked to us about an alternative to dispute resolution he brokered with a company that produced a remarkably similar look-alike!



I should start by saying I hate people who copy our designs. Many companies in our industry, take an existing product and simply apply a logo, colour or pattern to make it their own. We are innovators and ahead of the game. Our ethos at Black + Blum is to thrive on the creation of original designs from scratch. We pride ourselves on our creativity.

Basically, those that copy take the fast track to market on the backs of others! Is it right? No, it is stealing,

Over our 20+ year history, we are no strangers to copying; it is the plague of companies like ours. Copies vary from heavily inspired pass offs, to exact copies that even use our brand name. Websites like Alibaba even list companies who use our photography to showcase their copies. Sometimes, it has even been our own retail customers



who have seen our products selling well and then launched their own heavily “inspired” version. You’d think after all these years of being copied we’d have thicker skins and be less upset by it. The truth is it hurts every time and never gets any easier.

Our USP is our creativity and we pour our hearts and souls into every design that we work on. When someone copies us, they are not only stealing the idea, but also all the passion, effort and energy that we have invested in a new design. It is our sweat equity and original design ethos which has made our brand succeed, despite all odds.

For all our years of trading, we have been members of ACID (Anti Copying in Design). This amazing organisation was started by Dids Macdonald, OBE., in 1997. Dids started off as a designer, but after having her creations copied by larger companies she got very angry and co-founded ACID to help other designers fight for their intellectual Property (IP).

ACID has helped thousands of designers protect their IP and take legal action against the people who have copied them. We have used ACID on many occasions to help us challenge and defeat the companies who have copied us. Campaigning has been the cornerstone of ACID and in 2014 the IP Act was passed, spearheaded by ACID, which culminated in a law that makes the intentional infringement of a registered design a crime, punishable by up to 10 years in prison.



Dan Black, Co-Founder and Lead Designer at Black & Blum

At the end of last year, we discovered another brand that had copied our ‘slider divider’ design that we include in our stainless-steel lunch box. We could prove that the company in question had ordered a sample of our lunch box as soon as we launched it and then six months later, launched a lunch box that included a very similar slider divider.

We approached the company and thankfully were able to engage with them (this is not always possible to do). Their version of events was their Chinese supplier had offered the design of the divider to them and hadn’t realised that it was our creation. This is very typical and always a grey area. Whether it is true or not is not easy to prove. In some cases, the companies who buy a product from a manufacturer are innocent and not truly aware that they are buying a copy. In some case they know it is a copy.

With our divider, we could have gone down the legal route to challenge them through an ACID legal affiliate. We had unregistered design rights, but because the divider only made up a small part of the complete design, we felt that whilst we had very strong design evidence, this would have been a long drawn out process and even if we had won, it would be costly and time consuming. This is not to say anything negative about ACID or taking the legal route, but in each case of copying you must look at the bigger picture and consider the scale of the copy and how it will affect your business.

We thought a novel and pertinent approach would be to ask the other company to pay a royalty on the sales of the divider and give this to ACID to help fund their ACID Design Champion initiative for British Intellectual Property Day. We were

delighted that the company chose to follow this option as a positive alternative to dispute resolution.

Part of ACID’s success is promoting their logo as a brand of deterrence and “naming and shaming,” but because the company who copied us has offered to pay a royalty on the number of dividers they sell, we have agreed not to name them. Otherwise ACID would have been tempted to include them in the “Spot the Difference” page on the website, which is open to all designers to publish their originals and alleged copies. Not good for any company to be featured here!

There is something slightly ironic about this outcome, but we are pleased that something positive has come from it. It is highly unlikely that we will be able to achieve this result with every situation we encounter, but it feels good that we

can get such a satisfying end result.

If you have had similar experiences or found other innovative ways to deal with companies who have copied you, we’d love you to share them with us and ACID.

Intellectual property is a positive force for growth and the UK’s design community make a massive £85.2 billion pounds contribution to the UK economy. Why? Because we are very good at it.

A united voice is a strong voice and however IP infringements are sorted, the “me-too” culture of copying has got to stop!

www.black-blum.com

THIS IS NESSIE – FIGHTING INFRINGEMENT, A CONSTANT BATTLE!



In 2005, Nessie Maclay was a young mother with a sole trader business that had segued from handmade cards to producing bespoke, illustrated personalised stationery. The internet – as we know it now – was still in its infancy. Social media was limited to myspace.com and a waning interest in Friends Reunited. The iPhone was still two years away and outside of the near-ubiquitous Blackberry, folk who had email or browsing capability on a phone were considered most unusual.

There was a charm to this that is almost forgotten these days in a world where you can share almost anything with the swipe of a thumb. Today, everyone has access to the kind of promotion that builds a business from nothing in moments.

During 2005, Nessie was commissioned to produce some Change of Address cards that would capture the fact that her client was moving from London to the countryside. The

idea alighted on was of a row of illustrated green wellington boots – one for each member of the family – with the final pair artfully toppled over to depict their youngest child.

The client was delighted with her cards and Nessie developed this idea. She added other colours to the available wellies, created versions in the flags of over 70 countries and added embellishments such as flowers and cricket bats to allow customers a more granular expression of the characters of their families.

In the background, the internet developed apace and now all of Nessie’s designs and illustrations were widely visible on social media and via her own custom-built website.

Up until 2014, the wellies had been restricted to small postcards – they would feature at the top of correspondence cards, thank you notes and change of address announcements.

Ever unique, always appreciated, the device started to take on a life of its own and over time became the best-selling illustrations in the business. Nessie was now firmly known as “The Welly Lady” and was producing hundreds of thousands of these cards – all bespoke to their owners – which were shipped all over the UK and worldwide.

Then came the real breakthrough moment when Nessie came up with the idea to make the wellies into a larger format personalised print. The very first one was made for a friend’s birthday and was an almost instant hit. Nessie listed the product on the online marketplace notonthehighstreet.com and the print racked up six-digit sales in its first Christmas. Shortly after this it was named Product of the Year on the site amid an explosion of interest.

Nessie’s business grew from a single member of staff to a team of 15 and turnover hit seven figures.

Further development of the range followed and with tea towels, mugs, water bottles, chopping boards and bags added to the Welly collection. Nessie also developed a strategy for ensuring the longevity of the product, protecting the ways in which the illustrations could be used, continuously developing the illustrations and ensuring that the artwork did not become devalued.



Wellington Boots Frame created for The Woods Family

In 2016, friends and customers started to tell her – with varying degrees of outrage – that they were starting to see other people selling versions of the Welly Boot Print that were clearly inspired by Nessie’s original work.

She contacted ACID who put her in touch with Briffa and several legal challenges were prepared and fired off. The finely nuanced nature of “passing off” made this a frustrating exercise. A few honest souls admitted that they had been inspired by Nessie but others retrenched themselves in their convictions that they had not plagiarised her in any way. Nessie’s experience of this aspect will resonate with many members who have seen their ideas ripped off in this way.

But the internet had not finished with Thisisnessie yet. The manner in which Nessie’s illustrations were

displayed online for the benefit of customers made them easy fodder for “cut-and-paste” merchants. Suddenly anyone with a Facebook presence and a computer was using low end graphics software to cut out Nessie’s illustrations from the gallery on her website and composing knock-off versions of her artwork. They would then offer these for sale on social media.

In the main, these were easy to take down as the infringers would quickly understand that they were breaking the law. The harder thing was to find the infringers. Closed groups on social media number in the millions and support a grey economy where individuals offer items and services for sale. The closed aspect of these groups makes it nigh on impossible to see what is going on inside them. Without the valiant efforts

of supporters to tip her off, Nessie would have no idea this was going on.

The problem reached a peak when users started to share Nessie’s illustrations on an application called PicsArt in 2017. This led to nearly 100,000 infringements of the company’s copyright in just a few short weeks. Although PicsArt responded as quickly as they could once made aware of the issue, the appearance of Nessie’s illustrations in an application that made it so easy to create versions of her increasingly well-known idea gave rise to infringers thinking this validated their behaviour.

Nessie believes that infringement has cost her business at least £1m in lost sales over the last four years and this is very much ongoing. On the copyist front, as quickly as Nessie develops new variants of her

print, imitations proliferate as other producers put their conscience to one side - next door to their already discarded creative integrity – to jump on the coat tails of her ideas.

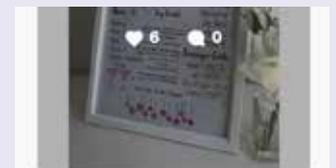
Nessie, meanwhile, believes that education is the key to changing the view that the internet is a free for all. Ethical creation needs to be at the heart of artistic training to make plagiarism as unacceptable as blowing smoke in a baby’s face.

Fortunately, the experience has not put Nessie off continuing to create and innovate in her sector. There are two responses to the adversity that her business has suffered, and Nessie is certainly not going to roll over. Her team will continue to call out anyone who steals her illustrations.

www.thisisnessie.com



Nessie's Original





Member Focus

Read the compelling story of how ACID Member The Crafty Lass® has put IP at the heart of their business strategy and how they have made full use of their ACID Membership Benefits to support their business!



When and why did you first start creating your products/designs?

The Crafty Lass® began in 2015 as a craft workshop and creative commissions company. However, I have been designing and being 'arty' for as long as I can remember! Based in Lower Boddington, Northamptonshire, we primarily focus on encouraging adults to try something new, meet new people, drink tea and make something unique and beautiful at the same time! Our workshops are intended to be therapeutic, not 'difficult' or 'exclusive' just some crafty time out from our busy modern day lives.

In addition to teaching, we also make commissions for events such as weddings, parties and for businesses and gifts. We sell a bright and graphic design led 'The Crafty Lass®' greeting cards range and have recently dipped our toes in the water for new product designs including an MDF Christmas range, for table and tree decorations, and a craft Advent calendar – The Crafty Lass ADVENTure!

I started the business when I simply quit my 9-5! Bored of office politics and being tied down to non-flexible working hours – and with a desire to work for myself, I launched the business initially holding 'mobile' craft workshops.



Now we have a dedicated craft studio in the glorious Northamptonshire countryside.

Did you have any knowledge of intellectual property (IP) when you started your business?

I knew how important copyright protection was, and it something I was aware of throughout my Printed Textile Design BA (Hons) degree, which I studied at Loughborough University. Unfortunately, 'copying' can be rife in the industry with a constant desire for the latest look and trends to be included in a range. This often leads to things

being replicated... but I have always morally thought just how 'wrong' it is to copy a design. What is the point? Good design stems from uniqueness and individuality – not stealing something that isn't yours. I hadn't heard of ACID whilst at University – but I noticed more and more the 'ACID' logos popping up on stalls at fairs and in shops. It stood out as something I should look in to should I go into any sort of business requiring design protection.

Which ACID Membership services have you used and how have you benefited from being a Member?

Being honest, I need to use the ACID Marketplace and the services much more than I do! It is a fantastic initiative and I need to schedule time in my diary to make everything as up to date as possible. I renew my membership every year, and I feel safe knowing that I have submitted designs to effectively 'date stamp' them, should they ever be required/called in to question at any stage!

Have you brought anything new to market recently that you would like to share?

Our recent Christmas range is something that was very exciting to launch – but looking forwards to 2019 there are lots more craft workshops and some wedding commissions already booked in and a few other exciting crafty plans! It will be a 'watch this space' for new The Crafty Lass® launches and designs!

What is the best aspect of ACID Membership for your business?

I like having my certificate and member of ACID logo to use if I am at any public event, and for use on my website. It is a strong statement and a deterrent for anyone considering using any aspect of our designs.

What advice would you offer to a new designer?

To just simply ensure you keep a record of everything involved in the creation of your designs! Keep on top of adding things to the ACID IP Databank.

ACID values the support of its members to enable it to campaign for design law reform. Do you have any messages for Government/Policy Makers on IP issues?

It is very difficult for SMEs to take legal action because of the time and costs involved. I would like to see simpler design laws and access to justice made more accessible to micro and small businesses. Creativity and innovation are the lifeblood of the creative industries and those who possess these skills need to ensure that their IP is not eroded by copying. The Government must encourage an ethos of respect for IP and support this with a much more robust enforcement system against those who steal. IP theft should be treated just as seriously as the theft of other valuables.

You can read more about The Crafty Lass® at www.thecraftylass.com



Member Focus

In our latest Member Focus we want to share ACID member Nicolas Mellor's fascinating insight into his company, Melver Furniture. All the inside stories of our amazingly diverse membership have one common theme – protecting their intellectual property to achieve growth and putting IP at the heart of their business strategy. Melver Furniture is no exception!



When and why did you first start creating your products/designs?

My love of contemporary furniture, and a desire to experiment with materials and techniques, resulted in Melver Design. I set up my workshop in 2011 after a 15-year career in electrical contracting. The designs and products came to fruition in 2014 after I had developed my skill set and equipment.

My interest in mid-century, modernist style and geometric abstraction combines beautifully with vivid colours and wood veneers to create truly unique pieces of furniture and light fittings.

Did you have any knowledge of intellectual property (IP) when you started your business?

I had very little knowledge of intellectual property other than it was difficult to protect design.

Which ACID Membership services have you used and how have you benefited from being a Member?

I have a few of my designs lodged in the ACID IP Databank and am currently uploading the rest of my

catalogue. The Member of ACID Logo is used on all my correspondence and displayed at any trade show that I attend. I am currently working on a marketing plan, so I will be using the ACID Marketplace very soon.

Have you brought anything new to market recently that you would like to share?

I have a new pendant light (Barnett pendant) which was completed at the end of last year. It is currently exclusively sold at the Lebonmarche store in Paris. I am working on a new product now to be ready to launch at Maison et Objet exhibition in September.

What is the best aspect of ACID Membership for your business?

Knowing that I have someone who has my back in regard to my IP means that it is one less thing to think about. Being self-employed means having to do everything, so spreading my workload gives me peace of mind.

What advice would you offer to a new designer?

I think it is invaluable to get support in a new business but for a designer I think protection of your IP is essential. It is too easy to copy elements of peoples work knowingly or not. If there are any steps you can do to protect your future, do it.



ACID values the support of its members to enable it to campaign for design law reform. Do you have any messages for Government/Policy Makers on IP issues?

Design law is very complex, so a priority is to make it easier to understand the laws regarding IP. Strengthening individual's power to protect their work through exemplary damages would be a great start. I would also like to see the introduction of criminal provisions for deliberate copying of unregistered designs as this would send a real deterrent message to those who copy as a specific commercial strategy.

Read more about Melver Furniture www.melver.co.uk



ACID Affiliate lawyer and partner at Stone King, Gavin Llewellyn explains The EU Copyright Directive and the controversy of Articles 11 and 13

Protection of copyright works

On 26 March, the European Parliament approved the controversial EU Copyright Directive to impose tighter regulation over content published online which is protected by copyright. However, the Directive will not be of any assistance to designers in the battle against online retail marketplaces.

The Directive came about because it was decided that copyright law currently fails to offer adequate protection to copyright owners who publish their works online. Online content-sharing service provider platforms, such as YouTube, make huge profits from the circulation of copyright works such as music on their platforms, whilst the copyright owners themselves see their works circulate freely, receiving very little or no remuneration for them.

Original works like songs, films and graphic works such as drawings and paintings are protected by copyright automatically, subject to certain criteria being met. If a work is protected by copyright, others cannot copy or distribute it without the copyright owner's consent. It is common

on online platforms for copyright works to be infringed, which has led to campaigning from creatives to reform current copyright laws to provide them with better protection against copyright infringement.

The Directive, in particular, Articles 11 and 13 summarised below (which are now Articles 15 and 17 due to a late re-draft), proved particularly controversial throughout the negotiations and received a lot of publicity. There has been a great deal of campaigning from protestors, in particular YouTube, and other online service providers, to amend the draft text.

In short, the controversial Articles can be summarised as follows:

Article 15

This requires online service providers (such as news aggregators) to pay royalties for publishing copies or extracts of newspaper articles and other publications. It does not apply to private and non-commercial use individual Internet users.

EU COPYRIGHT DIRECTIVE



- News organisations have the exclusive right to reproduce their press publications online – this means that online platforms cannot reproduce a news organisation's articles without their prior consent,
- This exclusive right does not affect hyperlinking to freely available content/or the use of individual words or very short extracts of a press publication (e.g. in search engine results),
- The exclusive right will expire 2 years after publication (calculated from 1 January of the year following the date of publication),
- Authors of works which are incorporated in a press publication will (unless they have transferred their rights by licence or assignment) receive a share of the revenues received by press publishers for the use of their press publications by online platforms.

Article 17

This requires platforms to obtain licences for the use of copyright works online.

- Online platforms must obtain authorisation (e.g. a licence) from copyright owners in order to make their works available to the public. Importantly, authorisation must cover acts carried out by the users of the online platforms, not just by the platforms themselves, provided that those acts are either non-commercial or their activity does not generate significant revenues,
- If no authorisation is granted, online platforms will

be liable for unauthorised acts of communication to the public of copyright protected works, unless they can rely on the defence in Article 17,

- There are exceptions and limitations to liability for Internet users for content uploaded for the purpose of quotation, criticism, review, and for the purpose of caricature, parody or pastiche and platforms should not remove such content. These rules are imprecise and likely to lead to a lot of case law,
- Online platforms must put in place an effective complaints and redress mechanism in case of

disputes over the removal of or blocking access to works. As set out above, online platforms will not be liable for unauthorised acts of communication to the public of copyright protected works if they can rely on the defence in Article 17. In short, the online platform must demonstrate it has (1) made best efforts to obtain authorisation, (2) made best efforts to ensure the unavailability now and in the future of copyright works which are unauthorised and (3) remove or block access to the unauthorised work upon receiving notice from the copyright owner.

If copyright owners discover that their works are being

published without their consent, they should give notice via the platform’s published notice and take-down procedure to ensure the removal of unauthorised content. That notice must contain a reasoned request setting out the case for removing or blocking the content in question.

Google has claimed that there will be a “45% reduction in traffic to news publishers” if it alters its links to press publications to avoid making payment under Article 15. As stated above, individual words and short extracts of the publication are permissible. However, how this will operate in practice is not clear.





YouTube argued that the implementation of Article 17 will result in an over-blocking of content to limit the legal risk of publishing work which is protected by copyright. The European Parliament responded to this concern by introducing the redress system set out in Article 17 which allows the reinstatement of content which an individual considers was wrongly taken down due to an alleged copyright infringement.

On the other hand, many creatives support the new directive, including artists such as Sir Paul McCartney and Debbie Harry (the lead singer in Blondie). They believe the EU Copyright Directive will ensure that copyright liability is applied correctly and consistently and that it will enable copyright owners to be fairly remunerated for their work.

The uproar from the online platforms is not unexpected given the extra burden it places on them, but no new rights or obligations are being created under the new legislation; rather the existing rights and obligations under copyright law are being strengthened to ensure that they are better respected in the future.

Axel Voss, the Member of the European Parliament who led the negotiations on

the new directive, expressed the need to update the current legislation, making reference to the fact that “the last laws to address copyright in the information society date back 17 years and the internet of today is fundamentally different to what it was in 2001”.

Unfortunately, the new law will not be of any use to designers in removing copies of their works from online marketplaces. This is because Recital 62 of the Directive expressly states that marketplaces whose main object is online retail are not covered by the Directive. It is a pity that more has not been done to strengthen the rights of copyright and design right owners in relation to copies of their works circulating on online marketplaces, which remains a huge problem. Member States will decide whether they approve the European Parliament’s decision in the coming weeks. If the text of the Directive is accepted, it will take effect after publication in the Official Journal and Member States will then have 2 years to implement it.

If the United Kingdom leaves the European Union with a deal, the EU Copyright Directive will apply to the UK during the transition period.

Gavin Llewellyn, ACID Affiliate lawyer and partner at Stone King



ACID Comment

Background – In the late 80’s there was a Green Paper on copyright which the EU tried to harmonise on duplication, lending, enforcement and databases. When the internet was created it was necessary to cover new copyright laws which would address concerns, this was called the Information Society Directive. At the same time, The E-commerce Directive was being created re: sales. Fast track on to 2010, when issues started to arise about use. It became problematic when Google introduced You Tube, and Amazon became the major tech platform. The question was how do creators (film and music sector content) get remunerated? So, various lobbying groups put pressure on the EU to produce an updated Directive so that the film and music industry could get better terms through licensing. The result is that it has also given greater transparency to performers and artists for works published and publishers are now more accountable i.e., publishers will have to share their income.

ACID welcomes a directive which recognises the rights of creators by enhancing their position. Currently this does not affect designs obtained from a website (i.e. physical items). The new directive is for content - mainly music and films.

www.stoneking.co.uk

New Members

ACID welcomes the following new members to the ACID Community



Member's Name	Design Category	Member's Name	Design Category
Beverly Todd	Ceramics	BCPL Limited	Interior Accessories
Paper and Wool	Childrenswear	Joanna Lloyd	Interior Accessories
Handy Spelling	Education	Margam Jones Tassels	Interior Accessories
Catherine Davis Designs	Fabrics & Textiles	Myoh Canada Inc	Interior Accessories
Comfort Home Furnishing UK Ltd	Fabrics & Textiles	Nick Munro Holdings	Interior Accessories
Isabel Kimbell Design	Fabrics & Textiles	Sweet Williams	Interior Accessories
Jan Erika Design	Fabrics & Textiles	Maggie Cooper Baskets/Donington Stile	Interior Design
Jonel van Schalkwyk	Fabrics & Textiles	Negus-Fancey Surface Design	Interior Design
Lilibet Smith Design	Fabrics & Textiles	Corrinne Eira Evans	Jewellery
The Feathered Serpent Limited	Fabrics & Textiles	Joan Ayguade Jarque	Jewellery
Aztec Diamond Equestrian (UK) Limited	Fashion	Joanne Guiraud London	Jewellery
Moaning Minnie Designs	Fashion	ROKUS	Jewellery
Technological Luxury LTD	Fashion	Roots Chic	Jewellery
The Tired Mama Collection	Fashion	drageekiss ltd	Kitchen & Bathroom
Ammique Ltd	Furniture	Thomas Crapper & Co Ltd.	Kitchen & Bathroom
Ian Cull Furniture Design Limited	Furniture	Dowsing & Reynolds	Lighting
Modern Wire Limited	Furniture	LUUM	Lighting
Riches Bespoke Furniture Specialist Ltd	Furniture	Maxwatt Design Ltd	Lighting
Spitfire Furniture Limited	Furniture	Transit Handrail Lighting Ltd	Lighting
Studio Twentyseven Design Ltd	Furniture	Meanmagenta Photography	Photography
Designers Art And Soul	Giftware	BabaBing! Limited	Product Design
Lydia Meiyng	Giftware	Carla Ballantine	Product Design
Sunny by Sue Limited	Giftware	Laserables	Product Design
Thinking Gifts Company Ltd.	Giftware	pH Art	Product Design
A-P design+print	Graphics	Sootmegs	Product Design
Orla Brosnan-Cusack	Graphics	The Wood Life Project Ltd	Product Design
Love Country Uk Ltd	Greetings Cards	Angela Melkis	The Arts
Jenny Robson Design	Greetings Cards	Manuela Kagerbauer	The Arts
Paper Sole Ltd.	Greetings Cards	Margit Wittig	The Arts
Penny Gaj	Greetings Cards	Originals In Pencil	The Arts
Sweet	Greetings Cards	Paul Smith Sculptures	The Arts
		Peepul	Toys

ACID's Joining Criteria for New Members

In accordance with our policy that all members are provisional members for the first 6 months of their subscription period, we publish a list in each newsletter of companies which have recently joined ACID. In the event that there is any complaint against a new member, please write to the Chief Executive together with any substantiated facts. Hearsay, rumour or unsubstantiated facts will not be considered under any circumstances. Any complaint that should arise will be put before a panel comprising ACID's legal advisor, Chief Executive and two Corporate ACID Members from a different industry sector. If the panel decides that a complaint should be upheld their decision will be final and no correspondence will be entered into ■

WHO WILL BE ACID DESIGN & IP CHAMPION 2019?

APPLY NOW!



Holly Hughes of Citradi, 2018 Female Design & IP Champion

ACID is promoting British IP Day by announcing the winner of our ACID Design Champion Award. The Alliance for Intellectual Property, of which ACID is a member and Dids Macdonald is Vice-Chair, celebrates every year the remarkable contribution of British Intellectual Property creators. Their aim is to promote the role that intellectual property rights (designs, trademarks, copyright and patents) play in encouraging innovation and creativity.

Are you an ACID Member with an innovative design you wish to enter to be considered as the 2019 ACID Design & IP Champion? This year entries are open to everybody.

HOW TO APPLY, it's easy. Please send us:

- Up to 250 words on why you or a colleague should be chosen as ACID's Design Champion, including why intellectual property matters to you/them and how you use your ACID membership benefits
- Include high resolution images representing your/their design
- Please include your/their name, company name, contact number, website and social media links to info@acid.uk.com with the subject line of; World IP Day Award

- Submit by 29th May 2019 to info@acid.uk.com

The winner will be presented with an engraved trophy and £250 gift voucher. There will also be a special feature on the winner in the ACID Magazine, a news article on our website and significant social media coverage. The winner will be invited to attend British IP Day at the Terrace Pavilion, Westminster on 26th June 2019.

Last Year's Female Design & IP Champion Holly Hughes of Citradi said, "I am thrilled to be chosen for this award by the Design Council and awarded by ACID. Inspired by the curves of nature, this concept of the Citrus chair is to change the way we think about seating."

This year's judges include: Dan Black of Black & Blum, Nick Kounoupas, Chief Counsel ACID, Sarah Weir, CEO Design Council and Deborah Dawton, CEO of the Design Business Association. The judges will be looking for excellence in design adhering to the highest standards.

Events

For further information on the following events in which ACID will be taking part visit the ACID Events page at www.acid.uk.com

**1.5.2019
BURNES PAULL IP & TECH
CONFERENCE, GLASGOW**

**9.5.2019
NATIONAL BED FEDERATION
CONFERENCE, CHESHIRE**

**21.5.2019
CLERKENWELL DESIGN
WEEK, LONDON**

**30.5.2019
EUROPA IP MEDIATION
CONFERENCE, ALICANTE**

**3.6.2019
YPIE FURNITUREMAKERS
IP DAY, LONDON**

**11.6.2019 - 12.6.2019
EXCLUSIVELY
HOUSEWARES, LONDON**

**26.6.2019
BRITISH IP DAY &
ANNOUNCEMENT OF ACID
DESIGN & IP CHAMPION
2019, LONDON**

**5.7.2019
WESTMINSTER MEDIA
FORUM, UK COPYRIGHT
POLICY, LONDON**

**14.7.2019 - 16.7.2019
MANCHESTER FURNITURE
SHOW, MANCHESTER**

Anti Copying in Design Ltd

**Anti Copying In Design Ltd.,
All Mail to: Graham House,
Chequers Close, Enigma
Business Park, Malvern,
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Nothing in this newsletter is intended to be a complete statement of the current law and you should always take specialist advice in respect of your own particular circumstances

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**ACID is proud to support
the Worshipful Company
of Furniture Makers**